

1 Social Security Act.^{1/} Plaintiff thereafter filed an opposition brief and a motion for summary
 2 judgment. Defendant hereby replies to Plaintiff's opposition brief and motion for summary
 3 judgment.^{2/}

4 The checks in question were returned (presumably by the correctional institution where
 5 Plaintiff was incarcerated) because the Social Security Act precludes payment of benefits to
 6 incarcerated individuals. Plaintiff alleges that the checks are his personal property and should be
 7 returned to him. Initially, the Social Security Administration assessed an overpayment against
 8 Plaintiff in the amount of checks sent to him during his incarceration; however, inasmuch as (some
 9 of the) checks were returned rather than being paid to Plaintiff, the overpayment was waived.
 10 Plaintiff, nonetheless, did not agree with the decision (that an overpayment existed) and requested a
 11 hearing before an administrative law judge (ALJ). Plaintiff's hearing request is still being processed,
 12 accordingly Plaintiff has not exhausted his administrative remedies under 42 U.S.C. § 405(g), and
 13 this Court has no jurisdiction to address his complaints.

14 II. ARGUMENT

15 A. Plaintiff Is Not Entitled to Payment of Benefits During Incarceration

16 The premise of Plaintiff's claim of right to payment of benefits is faulty at the outset. Plaintiff
 17 alleges that the benefit checks are his property and he is entitled to them. Plaintiff is mistaken.
 18 Social Security benefits are statutory, not contractual, and thus may be altered or eliminated at any
 19 time. Das v. Dept. of HHS, 17 F.3d 1250, 1256 (9th Cir. 1994), citing Weinberger v. Salafi, 422 U.S.
 20 749, 772, 95 S.Ct. 2457, 2470, 45 L.Ed.2d 522 (1975).

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 22 ^{1/} To be more precise, Defendant filed a motion to dismiss in two of the pending cases
 23 (Perez and Borba) after removing them from State Court. Defendant has not yet filed a motion to
 24 dismiss in the Astrue case because it has not yet been served. To the extent that it asserts the same
 claim presented the cases against Perez and Borba, Defendant requests the Court to sua sponte
 dismiss it for the reasons stated in the pending motions to dismiss.

25 ^{2/} Defendant submits that Plaintiff's motion for summary judgment should be denied as
 26 moot if the Court dismisses these cases for failure to exhaust administrative remedies. If the Court
 27 denies Defendant's motion to dismiss, Plaintiff's motion for summary judgment should still be
 denied because there is a triable issue of fact as to the dates of his incarceration.

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1 Here, Congress has elected to preclude payment of benefits to inmates, such as Plaintiff. The
2 Social Security Act precludes the payment of Social Security benefits:

3 to any individual for any month during which such individual is confined in a jail, prison,
4 or other penal institution or correctional facility, pursuant to his conviction of an offense
5 which constituted a felony

6 42 U.S.C. § 402(x)(1); see also 20 C.F.R. § 404.468(a) (2007); Butler v. Apfel, 144 F.3d 622 (9th
7 Cir. 1998) (affirming the constitutionality of precluding payment of Social Security benefits to
8 inmates). While Title II of the Social Security Act requires conviction for a felony, Title XVI,
9 which is the basis for the benefits Plaintiff was receiving, contains no such limitation. Title XVI
10 precludes payment of Social Security benefits “with respect to any month if throughout such month
11 he is an inmate of a public institution.” 42 U.S.C. § 1382(e)(1)(A); see also 20 C.F.R. §§ 416.201,
12 416.211, 416.1325 (2007). It is clear that Plaintiff is currently incarcerated, and thus is not entitled
13 to current payment of benefits. The question of whether Plaintiff was incarcerated at the time the
14 checks in question were paid is a question of fact that would be resolved by the Commissioner upon
15 exhaustion of administrative remedies, and thus should not be addressed here:

16 The findings of the Commissioner of Social Security as to any fact, if supported by
17 substantial evidence, shall be conclusive, and where a claim has been denied by the
18 Commissioner of Social Security or a decision is rendered under subsection (b) hereof which is
19 adverse to an individual who was a party to the hearing before the Commissioner of Social Security
20 ... the court shall review only the question of conformity with such regulations and the validity of
21 such regulations.

22 42 U.S.C. § 405(g); see also Schweiker v. Chilicky, 487 U.S. 412, 108 S. Ct. 2460, 2468-69, 101
23 L.Ed.2d 370 (1988). All other bases for review are precluded. 42 U.S.C. § 405(h).

24 The Social Security Administration receives inmate records from Federal, State and local
25 correctional and mental health facilities/institutions on an ongoing basis. When this program
26 operates correctly, the Social Security Administration is notified when a beneficiary is incarcerated

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1 or otherwise becomes an inmate of such a facility so that the Agency can suspend or terminate
2 benefits in accordance with the Social Security Act. If benefits are, nonetheless, paid to an
3 incarcerated individual, based on the preclusion against such payments, the individual is not entitled
4 to those benefits, and the Agency makes an initial determination of overpayment of benefits. See
5 20 C.F.R. §§ 416.535, 416.537-538 (2007).

6 Normally, the Agency is required to seek recovery of overpayments, however the overpayment
7 may be waived when the beneficiary was not at fault for causing the overpayment, or if recovery
8 would be against equity and good conscience. 20 C.F.R. §§ 416.550, 416.552, 416.554 (2007).
9 Normally, an overpayment caused by a beneficiary's failure to inform the Agency that he is
10 incarcerated would not be waived inasmuch as beneficiaries are required to notify the Commissioner
11 of such changes. 20 C.F.R. §§ 416.201, 416.552(a), 416.708 (2007). Nonetheless, in this case, the
12 overpayment was waived inasmuch as the checks were returned to Treasury. Waiver of an
13 overpayment is not an admission by the Agency that the beneficiary was actually entitled to the
14 payment. Indeed, if that was the case, the request for reconsideration would have been granted – it
15 was not. The waiver applied only to *adjustment or recovery* of the overpayment (“[w]aiver of
16 adjustment or recovery of an overpayment from the overpaid person himself (or, after his death, from
17 his estate) frees him and his eligible spouse from the obligation to repay the amount of the
18 overpayment covered by the waiver.”). 20 C.F.R. § 416.551 (2007). If, as the Agency found,
19 Plaintiff was incarcerated at the time the checks were paid, the Agency is *precluded*, by law, from
20 reissuing them, *regardless* of the waiver of overpayment. Thus, reissuance of the checks is not a
21 possibility unless Plaintiff can somehow show that he was not incarcerated when they were issued.
22 During a hearing before an ALJ, he can fully adjudicate the issue of whether the overpayment was
23 proper, and whether he was due those particular checks. Again, inasmuch as that issue is still before
24 the Commissioner and Plaintiff has not yet exhausted his administrative remedies in this regard, this
25 Court has no jurisdiction to address it and should dismiss all of Plaintiff's related complaints with
26 prejudice.

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1 B. Plaintiff is not Entitled to Payment of Benefits Pending a Hearing on the Overpayment

2 Plaintiff argues that he has a due process right to receive a hearing prior to recovery of stated or
3 alleged overpayments, and that he should be paid these amounts pending a hearing on the
4 overpayment. Plaintiff is mistaken.

5 The Social Security Act clearly precludes payment of benefits during any full month of
6 incarceration. Furthermore, the Commissioner's regulations specify that:

7 (a) ... a recipient is ineligible for benefits for the first full calendar month in which he or
8 she is a resident of a public institution (as defined in §416.201) throughout the calendar
9 month (as defined in §416.211(a)), and payments are suspended effective with such first
10 full month. Such ineligibility continues for so long as such individual remains a resident
11 of a public institution.

12 (b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed
13 effective with the earliest day of the month in which a recipient is no longer a resident of
14 a public institution. See §416.421. A transfer from one public institution to another or a
15 temporary absence from the institution lasting 14 days or less, however, will not change
16 his or her status as a resident, and the suspension will continue.

17 20 C.F.R. § 416.1325 (2007).

18 The Supreme Court has held that pre-termination evidentiary hearings were necessary in certain
19 welfare cases. Goldberg v. Kelley, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed.2d. 287 (1970). Goldberg,
20 however, sets out a standard for evaluating due process questions that, when applied, demonstrates
21 that Plaintiff was not denied his due process rights when the checks were not reissued pending a
22 hearing.

23 In Goldberg, the Court found it determinative that:

24 a welfare recipient is destitute, without funds or assets The extent to which
25 procedural due process must be afforded the recipient is influenced by the extent to which
26 he may be condemned to suffer grievous loss.

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1 Thus the crucial factor in this context – a factor not present in the case of the
2 blacklisted government contractor, the discharged government employee, the taxpayer
3 denied a tax exemption, or virtually anyone else whose governmental entitlements are
4 ended– is that termination of aid pending resolution of a controversy over eligibility may
5 deprive an eligible recipient of the very means by which to live while he waits. Since he
6 lacks independent resources, his situation becomes immediately desperate.
7 Goldberg v. Kelley, 397 U.S. at 261-264 (original emphasis). Here, as Congress noted in 1980 when
8 discussing a this provision of the Act, the prisoner’s needs are completely satisfied by the prison
9 system, and funded by the taxpayers. Thus, the single most important factor in Goldberg which
10 directed a pre-termination evidentiary hearing– need – is not present here. Plaintiff’s every need will
11 continue to be met by the taxpayers through the state prison system, despite the suspension of his
12 social security benefits.

13 Of course, the Supreme Court went on, in Mathews v. Eldrige, 424 U.S. 319, 326, 96 S. Ct.
14 893, 898, 47 L.Ed.2d 18 (1976), to note that the right to procedural due process is not limited to
15 situations in which poverty is involved. The Court also held in Eldrige, however, that where the
16 individual has

17 access to private resources, [and] other forms of government assistance, . . . there is less
18 reason here than in Goldberg to depart from the ordinary principle, established by our
19 decisions, that something less than an evidentiary hearing is sufficient prior to adverse
20 administrative action.

21 Mathews v. Eldrige, 424 U.S. at 342-343.

22 There is one other, very fundamental difference between Goldberg, Eldrige, and the case at bar.
23 As the Court goes on to discuss in Eldrige, another factor to consider when reviewing issues of
24 procedural due process, is “the fairness and reliability of the existing pre-termination procedures, and
25 the probable value, if any, of additional procedural safeguards.” Id. at 343. In other words, the
26 question is whether additional procedures or hearings have produced a different result. Here, the

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1 answer is a resounding “no.”

2 The goal of a due process procedure is not to delay the inevitable, it cannot be an exercise in
3 futility. The goal of any due process analysis is to prevent mistakes. In this context, the goal must
4 be to make sure that benefits are not erroneously denied to an eligible and entitled individual. Here,
5 however, due to an operation of law, Plaintiff is no longer eligible for the receipt of benefits, and
6 there are no set of facts, save Plaintiff’s immediate release from prison, that would have yielded a
7 different result.

8 C. This Court Has No Jurisdiction to Consider Plaintiff’s Allegations

9 Commissioner also has evidence to show that the checks returned that were part of an
10 overpayment determination were for a period of time during which Plaintiff was incarcerated.
11 However, this Court’s authority with respect to the routine processing of Social Security benefits is
12 limited. The Social Security Act limits the courts’ scope of review to the Commissioner’s final
13 decision, the evidence of the administrative transcript on which the decision was based, and the
14 pleadings. Russell v. Bowen, 856 F.2d 81, 84 (9th Cir. 1988) (citing 42 U.S.C. § 405(g)). Courts
15 are not fact-finders in Social Security cases. This Court does not have jurisdiction to hear this matter
16 de novo nor may the Court receive and consider or review extra-record evidence.

17 The Social Security Act bars peremptory judicial intervention in routine benefit claims
18 processing. The sole jurisdictional basis for review of administrative actions concerning claims for
19 benefits under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401 et seq. and 1381 et
20 seq., is set forth in 42 U.S.C. § 405(g) (applicable to SSI claims pursuant to 42 U.S.C. § 1383(c)(e)).
21 That section provides the judicial review only of a “final decision” of the Commissioner made after a
22 hearing to which the plaintiff was a party. Only final decisions of the Commissioner are subject to
23 judicial review. Schweiker v. Chilicky, 487 U.S. at 444-45; Cassim v. Bowen, 824 F.2d
24 791, 794 (9th Cir. 1987); 42 U.S.C. § 405(g). All other avenues of review are foreclosed by
25 42 U.S.C. § 405(h). Id.

26 A final decision is one in which a claimant has exhausted his or her administrative remedies.

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1 Cassim v. Bowen, 824 F.2d at 794; 42 U.S.C. § 405(g). A claimant must exhaust all administrative
2 remedies before bringing an action in federal court even if the administrative process is slow and
3 tedious. See Hironymous v. Bowen, 800 F.2d 888, 893-94 (9th Cir. 1986); Califano v. Sanders,
4 430 U.S. 99, 104 (1977); Heckler v. Day, 467 U.S. 104, 110-11 (1984) (although the “unusually
5 protective [multi]-step process for the review and adjudication of disputed claims,” can be tedious,
6 Congress declined to set deadlines on the administrative process). Furthermore, the Agency is in the
7 best position to do fact-finding:

8 the exhaustion requirement allows the agency to compile a detailed factual record and
9 apply agency expertise in administering its own regulations. The requirement also
10 conserves judicial resources. The agency will correct its own errors through
11 administrative review.

12 Kildare v. Saenz, 325 F.3d 1078, 1083-84 (9th Cir. 2003).

13 Finally, as a part of his complaint, Plaintiff must allege that he has exhausted his administrative
14 remedies as a basis for judicial jurisdiction. Holloman v. Watt, 708 F.2d 1399, 1401 (9th Cir. 1983).
15 Here, Plaintiff admits that he has not exhausted his administrative remedies inasmuch as he has not
16 received a hearing. He alleges that he has exhausted his administrative remedies because his hearing
17 request was dismissed, however that is not the case. Plaintiff’s hearing request is, in fact, being
18 processed.

19 Inasmuch as Plaintiff was not entitled to the benefits which he seeks, they do not belong to him
20 and need not, indeed *cannot* be repaid. Because he seeks repayment of benefits to which he is not
21 entitled, it could be argued that Plaintiff has failed to state a claim upon which relief may be granted.
22 Nonetheless, because Plaintiff has failed to exhaust his administrative remedies under the Social
23 Security Act, this Court has no jurisdiction to consider Plaintiff’s complaint.

24 III. CONCLUSION

25 For the foregoing reasons, Defendant’s motion to dismiss Plaintiff’s multiple complaints
26 should be granted.

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Respectfully submitted,

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